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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/267,350 03/15/99 POGREBINSKY

V P-2279-US

EXAMINER

WM01/0216

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ART UNIT

PAPER NUMBER

2663

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02/16/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/267,350

Applicant(s)

POGREBINSKY ET AL.

Examiner

Phuongchau Ba Nguyen

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on amendment in 12-18-2000.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☒ The proposed drawing correction filed on 18 December 2000 is: a) ☒ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 18) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: _____.

Response to Arguments

1. Applicant's arguments filed 12-18-2000 have been fully considered but they are not persuasive.

A/. Applicants argued that the term "likelihood" in claims 1, 3, 6, 7 "directed to the chance of another burst, based on detection and analysis of an earlier burst, from which the jitter buffer size will be adjusted". And its supported is in the specification page 11, line 23 to page 12, line 3 and Appendix A. {remarks in page 2}

In reply, no where in the specification page 11, line 23 to page 12, line 3 and Appendix A found a definition of a "likelihood" [i.e., a likelihood is....,etc.] It is notice that there is a definition of BurstLikelihood which "reflects a likelihood of burst" {see appendix A, line 26}. And "the likelihood of a subsequent burst is calculated from the TTP statistic at block 206"{see page 11, lines 23-24}. This is not a definition of the "likelihood".

B/. Applicants argued in page 3 of Remarks that "With respect to claim 3, the "width" is defined; in the specification at page 11, lines 5-7, as a value for a Time To Play (TTP) statistic. An exemplary width of two statistics is detailed with respect to fig. 7 and at page 11, lines 16-22."

In reply, it is not clear what meant by the "two statistics" at line 5 of claim 3? Were the "two statistics"[in line 5 of claim 3] represent for the "time to play statistic"[in line 5 of claim 3] or for the Hystogram #s 12 and 13 as in figure 7 or for the widths and offsets as in figure 7 as argued. It is notice that although the claims are interpreted in

light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

C/. Applicants also argued that 'With respect to claim 4, "estimating said jitter buffer size" results in "an estimate", and thus, this term in this claim has a proper antecedent.'

In reply, since applicant admitted that "estimating said jitter buffer size" results in "an estimate", thus claim is not proper if using "said estimate" [claim 4, line 3]. Therefore, the rejection in previous office action stands.

D/. Applicants also argued that "Claim 6 is a statistical analysis, as detailed in Appendix A and noted in the specification at, for example, page 12, lines 2-3."

In reply, it is not clear what meant by "claim 6 is a statistical analysis". This does not clarify the confusion raised in previous office action [i.e., claim 6 is not clear what meant by "a statistical analysis" in lines 2-3]. Also, it is notice that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

E/. Applicants also argued that "This reference," Steagall, "does not show a method for monitoring the network to detect a burst and subsequently use this burst

information to alter the queues in a subsequent burst. Accordingly, claims 1, 7, 9 and 13 are not anticipated by Steagall under 35 USC 102(b).”{page 4 in remarks}

In reply, Steagall does disclose a queue length monitor 53 in figure 5 for monitoring the network [the queues] if any potentially detectable delay [as a subsequent burst information] to determine the number of voice packets waiting to be played out by increasing or adjusting [as to alter] the period [as a subsequent burst] of the threshold timer in any queue so that to minimize the distortion caused by the discarding of voice packets will be inaudible as well as masked by other voice signals {see column 8, line 57 to column 10, line 28 and figure 5}. Therefore, the rejection set forth in previous office action stands.

It is notice that claim 7 was not being rejected as being anticipated by neither Steagall or Klingler references.

F/. Applicants also argued that Klingler is unlike to “the claimed invention that alters jitter buffer size in accordance with a likelihood of a subsequent burst, based upon an analysis of a previous burst. Accordingly, claims 1, 7, 9 and 13 are not anticipated by Klingler under 35 USC 102(b).”{page 4 of remarks}

In reply, Klingler does disclose that each data element spends a certain amount of time in the FIFO 100 waiting to be read out. The buffer fullness signal BF is compared against a designated ‘fullness/time delay’ range [as previous burst] to determine whether to issue a hold write address to cause the buffer size changed to reach within a specified range. The adjusting of buffer size is based on the

previous/designated fullness range. Klingler further discloses that "If the buffer fullness signal BF indicates a level that is out of range, then the buffer size will occur to pull the buffer fullness towards the middle of the specified delay range. If the fullness is over the upper delay threshold, then a hold write address instruction is issued to cause a data element to be skipped allowing buffer size to fall within the specified range. If the fullness is below the lower delay threshold, then a hold write address instruction is issued to cause a data element to be repeated allowing the buffer size to reach within the specified range {column 5, lines 15-46, and see figure 1}. Therefore, the rejection set forth in previous office action stands.

It is notice that claim 7 was not being rejected as being anticipated by neither Steagall or Klingler references.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 1, claim is not clear what meant of "a likelihood"? Please define and also clarify "a likelihood" of what is determined (line 5)? Claims 3, 6, 7 also have the same problems.

As to claim 3, it is not clear what meant by "two statistics". Please define. Claim 7 also has the same problems.

Claim 4 recites the limitation "said estimate" in line 3. There is insufficient antecedent basis for this limitation in the claim.

As to claim 6, claim is not clear what meant by "a statistical analysis"(lines 2-3). Please define.

Applicant is requested to reference all limitations as remarked above to the specification, so metes and bound of the claim can be determined from the claim language.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim(s) 1-2, 4-5, 9-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Steagall et al (5,127,001).

Steagall discloses in figure 5 buffers 52a-n, queue length monitor 53 (monitoring is inherent) for determining (measuring) the number of voice packets waiting to be played out (time to play) in each queue corresponding to each respective member node (location), threshold timer 55 (determining and adjusting) [col.8, 57-col.10, 28]. Steagall further discloses the adaptive adjustment of threshold timer period to maximize fidelity

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of the voice transmission. If the local threshold timer provide shorter period than the source, interpacket gaps (statistics) may be created. The threshold timer can be adjusted or adaptively corrected on the basis of monitoring delays such as end to end delays.

Steagall further comprises that timer period will approximate the playout interval of a voice packet to minimize the distortion and optimum fidelity of the voice signal reproduced.

6. Claim(s) 1-2, 4-5, 9-10, 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Klingler (5,323,272).

Klingler discloses an audio receiver FIFO memory buffer and the FIFO's fullness monitored and maintained in response to an external signal to within a specified range delimited by an upper and lower threshold and these thresholds are set and adjusted by the threshold adjust logic 140 (see figure 1, col.4, 7-col.5, 53).

Allowable Subject Matter

7. Claims 3, 6-8 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phuongchau Ba Nguyen whose telephone number is (703) 305-0093 and available Monday-Friday from 10:00 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen, can be reached on (703) 308-5340. The fax number for this group is (703)305-9509.

Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-4700.

PN

P. NGUYEN

February 14, 2001

Chau T. Nguyen
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